

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KENNETH FLEMING, JOHN DOE, R.K., and  
T.D.,

Plaintiffs,

v.

THE CORPORATION OF THE PRESIDENT  
OF THE CHURCH OF JESUS CHRIST OF  
LATTER-DAY SAINTS, a Utah corporation  
sole, a/d/a "MORMON CHURCH"; LDS  
SOCIAL SERVICES a/d/a LDS FAMILY  
SERVICES, a Utah corporation,

Defendants.

NO. C04-2338 RSM

DECLARATION OF MICHAEL T. PFAU  
IN SUPPORT OF PLAINTIFF'S MOTION  
TO COMPEL

**NOTE ON MOTION CALENDAR:  
OCTOBER 28, 2005**

I, Michael T. Pfau am over the age of 18 and am competent to testify as follows:

1. I am attorney for the Plaintiffs in this case. I have personal knowledge of the facts and circumstances surround this motion.

2. Attached as Exhibit A are true and correct copies of the relevant excerpts of the deposition of Randall Borland.

3. Attached as Exhibit B are true and correct copies of the relevant excerpts of the deposition of Phillip J. Coleman.

DECLARATION OF MICHAEL T. PFAU - 1 of 2  
(C04-2338 RSM)  
[152167 v3.doc]

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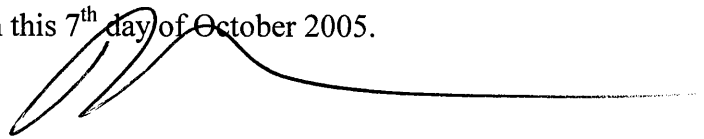
1           4. Attached as Exhibit C are true and correct copies of the relevant excerpts of the  
2 deposition of Frederick R. Johansen.  
3

4           4. Attached as Exhibit D are true and correct copies of the relevant excerpts from  
5 the deposition of Lloyd Hale.  
6

7           5. On October 6, 2005 I along with my co-counsel Timothy Kosnoff, held a  
8 conference with Marcus Nash, attorney for the Church of Latter Day Saints about the issues  
9 set forth in this Motion, including the assertion of privilege and instructions not to answer.  
10 This discussion was conducted pursuant to FRCP37.  
11

12           I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE  
13 STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.  
14

15           DATED at Seattle, Washington this 7<sup>th</sup> day of October 2005.  
16

17 

18           Michael T. Pfau  
19  
20  
21  
22  
23  
24  
25  
26

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**EXHIBIT A**

FLEMING v. THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS  
September 20, 2005 RANDALL BORLAND

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KENNETH FLEMING and JOHN DOE, : No. C04-2338 RSM  
: (Judge Ricardo Martinez)  
:  
Plaintiffs, :  
:  
-v- :  
:  
THE CORPORATION OF THE :  
PRESIDENT OF THE CHURCH OF :  
JESUS CHRIST OF LATTER-DAY :  
SAINTS, a Utah corporation :  
sole, a/k/a "MORMON CHURCH"; :  
LDS SOCIAL SERVICES a/k/a :  
LDS FAMILY SERVICES, a Utah : Videotaped Deposition of:  
corporation, : RANDALL BORLAND  
:  
Defendants.: :

September 20, 2005 - 9:08 a.m.

Location: Kirton & McConkie  
60 East South Temple, Suite 1800  
Salt Lake City, Utah

Diane W. Flanagan, RPR  
Notary Public in and for the State of Utah

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1 Q When you first joined the Kent Second Ward, was  
 2 Jack Loholt involved in the ward scouting program?  
 3 A I'm not sure. I don't know when the involvement  
 4 would be. I don't know -- I don't -- I'm not sure of that.  
 5 Q Do you recall whether Jack was involved in  
 6 scouting before you became bishop?  
 7 A Yes.  
 8 Q What do you remember about that?  
 9 A That he was involved in scouting.  
 10 Q What's your -- what's your specific memory of  
 11 that?  
 12 A I remember him helping make canoes which was a big  
 13 project. That's -- that's all I specifically remember. But  
 14 the involvement would be an involvement. You're part of the  
 15 scouting program, but I don't -- I didn't have hands-on  
 16 personally so...  
 17 Q Do you have a recollection of whether, in your  
 18 opinion, the scout program within the ward was functioning  
 19 well when you became bishop?  
 20 A No, I don't recall that. I do not recall that.  
 21 Q You don't recall having any beliefs or opinions  
 22 one way or the other about how well or how poorly it was  
 23 functioning?  
 24 A When I became bishop?  
 25 Q Yes.

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1 A No, I don't recall that.  
 2 Q Okay. Who would have been responsible for making  
 3 sure that adult volunteers within the scouting program were  
 4 registered with the Boy Scouts of America?  
 5 A That, I would believe, would be the president of  
 6 the MIA and I -- he would be the one, I would think, that  
 7 would make sure the forms were filled out.  
 8 Q Do you ever recall reviewing or signing any  
 9 application for registration with the Boy Scouts on behalf  
 10 of any of the adult volunteers within the program?  
 11 A I don't recall that, no, huh-uh (negative).  
 12 Q At some point in time when you were a member of  
 13 the Kent Second Ward, did you become aware of any complaints  
 14 or concerns that Jack Loholt may be engaging in sexually  
 15 inappropriate activity?  
 16 MR. FREY: Before you answer that question, I want  
 17 to tell you that you are not to reveal any confidences that  
 18 you gained in your capacity as bishop.  
 19 A Okay. Would you say that again, please?  
 20 MR. KOSNOFF: Could you repeat the question.  
 21 (The record was read as requested)  
 22 A You said, "May be." Yes, I did.  
 23 Q Now, let's talk first about the period of time  
 24 before you became bishop.  
 25 A Okay.

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1 Q Did you become aware of problems in this regard  
 2 with regard to Jack Loholt during that time period?  
 3 A No.  
 4 Q Okay. Now, turning to -- our attention to the --  
 5 let me back up a second. We established when you became  
 6 bishop, we think, approximately in 19 -- February of --  
 7 excuse me, May of 1971. Do you remember when you were  
 8 released as bishop?  
 9 A Three years. Excuse me. The reason it was short  
 10 is I wanted to continue with my education.  
 11 Q So did you ask to be released?  
 12 A I did.  
 13 Q And that was for the reason that you wanted to  
 14 continue your education at BYU?  
 15 A Uh-huh (affirmative), yes.  
 16 Q Did you -- did you start your -- your education at  
 17 BYU during the fall term?  
 18 A I don't remember.  
 19 Q Who succeeded you as bishop of the Kent Second  
 20 Ward?  
 21 A It was one of two, and I'm relatively sure that it  
 22 was Coleman. It was Coleman.  
 23 Q The same records that we've received, Exhibit  
 24 No. 1.  
 25 A Page 1?

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1 Q Page 1 seems to indicate that Philip Coleman was  
 2 sustained as bishop August 19, 1973.  
 3 A Where are we?  
 4 Q Go to page 10.  
 5 A Oh, 10. August --  
 6 Q -- 19th.  
 7 A Okay.  
 8 Q And it does seem to indicate on August 19th that  
 9 Randall K. Borland was released as bishop of the Kent Second  
 10 Ward. Do you see that entry?  
 11 A I do.  
 12 Q Do you have any reason to believe that's not  
 13 accurate?  
 14 A No, because I know I was released.  
 15 Q Okay. But that the date is accurate?  
 16 A I -- I'm just going to assume. I'm not going to  
 17 question it, but I don't remember that date.  
 18 Q Okay. And it indicates that Philip Coleman was  
 19 sustained as bishop on the same day.  
 20 A Yes.  
 21 Q To the best of your recollection, does that entry  
 22 and that date seem correct to you?  
 23 A I don't remember the date at all, but I know  
 24 that's what transpired. He succeeded me as bishop.  
 25 Q Is it possible that you began Brigham Young

14 (Pages 50 to 53)

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1 University in the fall of 1973 and not in 1975?  
 2 A Is it possible?  
 3 Q Yes.  
 4 A Instead of when?  
 5 Q I believe you testified earlier that you thought  
 6 you came to Utah in 1975 to begin your studies.  
 7 A That was a guess, wasn't it? That was an  
 8 approximate guess.  
 9 Q Yes.  
 10 A Yeah, it's possible then. It's possible, but I  
 11 don't know, but very possible.  
 12 Q Okay.  
 13 A That would fall in line. This is -- in that  
 14 regard that's helpful.  
 15 Q Well, as we get older, we all need these little  
 16 aids, don't we?  
 17 So during this approximate three-year time period  
 18 that you were bishop of the Kent Second Ward, you've  
 19 indicated that you did receive a complaint regarding  
 20 sexually inappropriate activity by Jack Loholt. Correct?  
 21 MR. FREY: I'm going to object to the form of the  
 22 question. It assumes something that he hasn't testified to.  
 23 Go ahead.  
 24 Q (By MR. KOSNOFF) Did you receive a complaint or  
 25 report from anybody that Jack Loholt had engaged in sexually

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1 inappropriate activity during the time that you were bishop  
 2 of the Kent Second Ward?  
 3 MR. FREY: Now, again, Bishop, I'm going to  
 4 caution you that if you learned any of this information in  
 5 your capacity as a bishop in a confidential communication  
 6 that you have the privilege not to answer it, in my opinion.  
 7 Counsel may differ with that, but I would instruct you not  
 8 to answer it if that's the basis upon which you gained your  
 9 information.  
 10 MR. KOSNOFF: I would like to ask a few foundation  
 11 questions before he answers that question in light of your  
 12 instruction to your client.  
 13 MR. FREY: Okay.  
 14 Q (By MR. KOSNOFF) Assuming the answer to the  
 15 question is yes, did you receive this communication in your  
 16 capacity as a clergy person for the Mormon church, that is,  
 17 in your role as clergy in the Mormon church?  
 18 MR. FREY: Object to the --  
 19 A That was a hypothetical. That was hypothetical --  
 20 MR. FREY: Excuse me. I'm going to object to the  
 21 form of the question.  
 22 You may answer, though. Go ahead. Have her read  
 23 it back. Please wait until -- give me a second because I  
 24 have the right to make objections.  
 25 THE WITNESS: I'm sorry.

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1 MR. FREY: Okay. Go ahead.  
 2 (The record was read as requested)  
 3 A I'm answering a question based on an assumption?  
 4 Q Yes. I'm not asking you for the content of the  
 5 communication yet. I'm asking you questions about the  
 6 circumstances under which the communication was made.  
 7 A Yes.  
 8 Q Was the communication made for purposes of  
 9 pastoral response by you?  
 10 A Are we still on an assumption? Are these  
 11 questions or -- because you said assuming that the answer  
 12 was yes. I've never answered that question yet, and forgive  
 13 me. I'm being a little dense here, but I don't know if I'm  
 14 still answering on an assumption. Am I saying that right  
 15 even?  
 16 Q Yes, you are.  
 17 A Okay.  
 18 Q Because the answer yes or no to the question could  
 19 potentially violate a privilege. But before you answer that  
 20 question, I'm asking you questions surrounding that  
 21 communication. Okay? I'm not asking you about what was  
 22 said or whether the answer to my -- that previous question  
 23 was yes or no. I'm just asking you other questions related  
 24 to the nature of that communication and the surrounding  
 25 circumstances.

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1 A Okay.  
 2 Q So again my question is: Was this something that  
 3 you learned in connection with pastoral counseling within  
 4 the Church?  
 5 A Yes.  
 6 Q Was the information that you received something  
 7 that you are required to keep confidential under the  
 8 doctrines and teachings of your church?  
 9 A Yes.  
 10 Q Was the communication that you received something  
 11 that you in fact kept confidential, that is, that you did  
 12 not disclose to any other person?  
 13 A Let me make sure I understand that. A  
 14 communication not disclosed to anybody else?  
 15 Q Correct.  
 16 A The answer to that question, if I've heard the  
 17 question correct, is yes or -- let me rephrase it, and then  
 18 tell you what I thought you said.  
 19 Q Go ahead.  
 20 A I did not disclose what was said confidentially to  
 21 me to others.  
 22 Q Just so that I'm clear on this, you did not  
 23 disclose the content of what was said to you by that person  
 24 to any other person?  
 25 A The content of that conversation, that meeting, I

15 (Pages 54 to 57)

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1 did not.

2 Q Okay.

3 A The best of my recollection.

4 Q Okay. Did you ever make a referral to LDS Social  
 5 Services for counseling Jack Loholt?

6 A I don't remember. I do not remember that.

7 Q Did you do anything or say anything to anyone else  
 8 following the communication that you received from this  
 9 person?

10 A Regarding specifics?

11 Q Anything.

12 A Yes.

13 Q What did you do or say?

14 A I talked --

15 MR. FREY: Again I'm going to caution you that if  
 16 you took any steps in your capacity as a clergyman and  
 17 ecclesiastical in accordance with the teachings and beliefs  
 18 of the LDS religion that you are not obligated to break that  
 19 confidentiality if in fact you learned that in those  
 20 circumstances.

21 And for the record, Counsel, what I'm trying to do  
 22 here is allow you to ask questions without reaching what I  
 23 believe is a privilege that he has as a bishop to receive  
 24 information, treat it with confidentiality, and act on it in  
 25 an ecclesiastical fashion.

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1 MR. KOSNOFF: Could you identify the source of  
 2 that privilege.

3 MR. FREY: State v. Martin and the statute, the  
 4 First Amendment.

5 MR. KOSNOFF: So are you relying on the clergy  
 6 penitent privilege?

7 MR. FREY: And his First Amendment rights.

8 MR. KOSNOFF: What First Amendment rights are you  
 9 referring to?

10 MR. FREY: Free exercise rights.

11 MR. KOSNOFF: Specifically what in the free  
 12 exercise clause are you basing this privilege?

13 MR. FREY: That he has the right to free exercise  
 14 of religion to be free from the restraint of having a civil  
 15 court interfere and make him disclose confidential  
 16 communications. We've been through this. We've briefed it.  
 17 We've already argued it in the Court of Appeals and won it.

18 MR. KOSNOFF: No. We've --

19 MR. FREY: And that's what I'm doing here.

20 MR. KOSNOFF: No. That was a completely different  
 21 issue and very different narrow issue than --

22 MR. FREY: And there's a third item involved here  
 23 that we haven't gotten to yet, but that is the privacy  
 24 rights of individuals who may be involved, if any. But I'm  
 25 trying not to interfere with your legitimate discovery area,

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1 and so I'm trying to be very careful here. And I want you  
 2 to understand that it's not my purpose here to frustrate  
 3 your discovery, but I do want him to be careful that he  
 4 doesn't breach any of the confidentiality that is imposed  
 5 upon him by his position as a clergyman.

6 So if you can read back the question. Sorry about  
 7 the speech --

8 MR. KOSNOFF: Well, I -- we have gone through the  
 9 criteria for the appropriate assertion of the clergy  
 10 penitent privilege, and that shields him from disclosing the  
 11 content of privileged communications based upon that  
 12 statute. My questions now are not directed at the content  
 13 of that communication. My questions are directed at what he  
 14 did or said to others following that communication.

15 MR. FREY: But that may very well involve his  
 16 working in an ecclesiastical capacity and involve  
 17 conversations with other people that are privileged, and  
 18 that's my point.

19 MR. KOSNOFF: That -- it's our position that that  
 20 would not be privileged and that he is required to answer  
 21 those questions.

22 MR. FREY: Just a second.

23 (Defense counsel confer)

24 MR. FREY: I -- I've made my objection. We  
 25 disagree. Okay?

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1 MR. KOSNOFF: Are you directing him not to answer.

2 MR. FREY: No, I'm not. I'm asking him if he can  
 3 answer without violating -- if he can answer about what he  
 4 did without violating any confidentiality that I believe he  
 5 has the right to maintain as a bishop, then he may answer  
 6 the question.

7 A I believe I can do that. Confidentiality is very  
 8 important to me. I -- the only reason I even hesitate at  
 9 all is because of the conversation, and I'm very respectful  
 10 of both of you. I didn't talk about, to another person, the  
 11 content of my discussion with the ward member that contacted  
 12 me, but the circumstance surrounding it I did, and that was  
 13 Jack Loholt. I had to talk with him.

14 Q And that conversation that you had with Jack  
 15 Loholt took place fairly soon after?

16 A Yes, sir.

17 Q And what was said?

18 MR. FREY: Again, you may answer that question if  
 19 it will not violate any privilege that you have as a  
 20 clergyman.

21 A I don't believe I can answer that.

22 Q Again let's go through some of the questions that  
 23 I asked you before, a checklist, if you will.

24 A Okay.

25 Q Because there's -- may well be a judge that's

16 (Pages 58 to 61)

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1 Q Would you communicate this information to the  
 2 police?  
 3 A Not necessarily, no.  
 4 Q Would you communicate it to the local Child  
 5 Protective Services agency?  
 6 A No.  
 7 Q Would you attempt to substantiate the accusation  
 8 yourself?  
 9 A I suspect I would, uh-huh (affirmative).  
 10 Q How?  
 11 A It would depend on the circumstance. It would  
 12 depend on the people. It would depend on the emotions. It  
 13 would depend on a gamut of things, a wide range of things  
 14 that would all focus in on is this legitimate, is this real,  
 15 or is it just an accusation, is it somebody that's upset  
 16 with somebody and angry, whatever it might be.  
 17 Q Have you ever actually had to conduct such an  
 18 investigation?  
 19 A I'm sorry?  
 20 Q Have you ever actually been presented with a  
 21 scenario like this?  
 22 A I'm going to have a difficulty answering that  
 23 question --  
 24 MR. FREY: Again, I'm going to instruct you if  
 25 that's going to cause you -- or require you, pardon me, to

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1 go ahead and disclose any type of information that you  
 2 received in your position as a clergy member.  
 3 For the record, I want to make this clear,  
 4 Counsel. I'm quoting from State v. Martin so we'll know  
 5 exactly what we're talking about. And they there say that  
 6 rather than the statute -- "Rather, the statute only  
 7 requires the clergy member receiving the confidential  
 8 communication be enjoined by the practices or rules of the  
 9 clergy member's religion to receive the confidential  
 10 communication and to provide spiritual counseling." That's  
 11 what I'm trying to protect him with.  
 12 MR. KOSNOFF: That's one of the elements.  
 13 MR. FREY: Okay. Well --  
 14 MR. KOSNOFF: They didn't throw out the elements  
 15 of the statute, and I'm very well-acquainted with State v.  
 16 Martin.  
 17 Q (By MR. KOSNOFF) Let's get back to -- let's get  
 18 back to Mr. Loholt. You testified earlier that you spoke  
 19 with Jack Loholt. Are you asserting the privilege with  
 20 respect to your communication with Jack Loholt regarding any  
 21 allegations of child sexual abuse?  
 22 A As being confidential?  
 23 Q Yes.  
 24 A Yes.  
 25 Q Did you speak with anybody else other than Jack

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1 Loholt regarding information that he may have engaged in  
 2 sexual misconduct with a child?  
 3 A No.  
 4 Q So anything that was said between Jack Loholt and  
 5 yourself was kept strictly to yourself. Is that correct?  
 6 A I can't speak for Jack Loholt. It was kept within  
 7 me.  
 8 Q Was that information shared with anyone else on  
 9 the bishopric, such as your first or second counselor?  
 10 A What information?  
 11 Q Any information that Jack Loholt may have engaged  
 12 in sexual misconduct with a child.  
 13 MR. FREY: Again, these communications between you  
 14 and your counselors are also privileged, but go ahead.  
 15 A So the answer -- I guess my answer would be -- is  
 16 my discussion with my counselors would be confidential. I  
 17 don't -- I don't remember discussing that with anybody.  
 18 Q So you have no recollection of discussing with  
 19 anybody else?  
 20 A I have no recollection of that.  
 21 Q Okay.  
 22 A That's correct. I do not.  
 23 Q Did you remove Jack Loholt from any positions  
 24 working with youth in the ward while you were bishop?  
 25 A Did I remove him?

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1 Q Yes.  
 2 A Released him --  
 3 Q Okay.  
 4 A -- yes.  
 5 Q And what positions did you release him from?  
 6 A His responsibility in scouting.  
 7 Q Why did you release him?  
 8 MR. FREY: You can't --  
 9 A I can't divulge that.  
 10 Q I'm not asking you to reveal any communications.  
 11 I'm asking you your personal reasons why you released him  
 12 from scouting.  
 13 MR. FREY: Same objection. You're entitled to  
 14 claim the privilege.  
 15 One reveals the other, Counsel.  
 16 Q (By MR. FREY) Isn't it a fact that you removed  
 17 Jack Loholt from scouting because you knew that he presented  
 18 a danger to boys of sexual abuse?  
 19 A I -- I am not going to answer that.  
 20 Q Did anybody ask you why you were releasing Jack  
 21 Loholt from scouting?  
 22 A Nobody asked me why I was releasing him that I can  
 23 remember.  
 24 Q Did you make any announcement to members of the  
 25 ward, either in a general meeting or in meetings of any

19 (Pages 70 to 73)

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1 Q Okay. After you removed Jack Loholt from  
2 positions working with youth in the ward, did you ever  
3 permit Jack Loholt to be alone with your children?

4 MR. FREY: Object to the form of the question.  
5 That isn't what he testified to, Counsel. You misstated the  
6 evidence.

7 A Permit?

8 Q Or allow?

9 A It never happened. I don't -- there's no permit  
10 or allow. It never happened.

11 Q Okay. All right. So there was never an occasion  
12 after you removed Jack Loholt from scouting that your  
13 children were ever alone with Jack Loholt?

14 A Not to my knowledge.

15 Q Were your children in scouting in the ward?

16 A Uh-huh (affirmative).

17 THE COURT REPORTER: Excuse me. Yes?

18 A Yes.

19 Q Were they in scouting in the ward when Jack Loholt  
20 was involved in scouting?

21 A I believe so.

22 Q How do you know that your children were never  
23 alone or with Jack Loholt? And when I say alone, I mean  
24 with no other adults present.

25 A That's why I said not to my knowledge. I don't

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1 know, but to my knowledge they weren't.

2 Q Have you ever inquired of your own children  
3 whether or not Jack Loholt ever did anything of a sexually  
4 inappropriate nature to them?

5 A I'm not willing to answer that.

6 Q Whether you did or didn't?

7 A Yeah, I'm not willing to answer that question  
8 because you used the word ever.

9 Q Okay. Let me rephrase the question. At any --

10 A Actually the answer to that question is: No, I  
11 didn't. The question you asked, the answer is no.

12 Q Okay. You've never spoken to any of your children  
13 as to whether Jack Loholt ever did anything of a sexually  
14 inappropriate nature to them?

15 A I have not. I did not. I have never asked them  
16 that.

17 Q Have -- and have any of your children ever  
18 volunteered to you whether Jack Loholt had ever done  
19 anything of a sexually inappropriate nature to them?

20 A No.

21 Q After you were released as bishop, is it your  
22 recollection that you left Washington for Utah fairly soon  
23 after that?

24 A That's my recollection.

25 Q And have you resided for any length of time in

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1 Washington state since you left?

2 A Pardon me. I went up there for a summer to play  
3 baseball.

4 Q Approximately what year?

5 A It would be the summer or the second summer, I  
6 believe, after we came down here.

7 Q Were you some kind of semipro baseball player, or  
8 was this a recreational --

9 A This is just a rec -- yeah, just a rec, just to  
10 get together.

11 THE VIDEOGRAPHER: I have 90 seconds.

12 A But also I had all my family up there, sisters and  
13 brothers.

14 MR. NASH: Did you hear, he has 90 seconds?

15 Q (By MR. KOSNOFF) All right. So I take it by your  
16 answer this was recreational baseball, and it wasn't in any  
17 professional capacity?

18 A No, it was not professional.

19 MR. KOSNOFF: Okay. Why don't we take our break  
20 so the court reporter (sic.) can change tapes.

21 (Recess taken 11:16 a.m. to 11:27 a.m.)

22 THE VIDEOGRAPHER: This is tape No. 3 of the  
23 deposition of Bishop Randall Borland. The time is 11:27.

24 Q (By MR. KOSNOFF) Bishop Borland, just to tie up a  
25 few loose ends, I want to go back and identify the date, if

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1 we can, when Jack Loholt was released by you as assistant  
2 scoutmaster of the Kent Second Ward. If you would turn to  
3 page 5 of Exhibit 1. That is the numbered page 5.

4 A Okay.

5 Q If you go to February 6, 1972, the entry indicates  
6 Jack Loholt was released as assistant scoutmaster on that  
7 day?

8 A Yes, that's what it says. I don't remember the  
9 dates.

10 Q Okay. But is that consistent with your general  
11 recollection as to when you released Jack from the scouting  
12 program?

13 A Yes.

14 Q And without disclosing the communication, was it  
15 fairly quickly after you received information regarding Jack  
16 Loholt?

17 A Are you asking if that's my memory?

18 Q Yes.

19 A Yes, uh-huh (affirmative).

20 Q And is it -- is it your testimony that you never  
21 spoke to the scoutmaster, why you were releasing his  
22 assistant scoutmaster?

23 A That's correct.

24 Q And you never told your first or second counselor  
25 the reasons why you were taking that action?

21 (Pages 78 to 81)

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FLEMING v. THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS  
 September 20, 2005 RANDALL BORLAND

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1 A I don't believe I did, huh-uh (negative). I  
 2 didn't divulge that, no.  
 3 Q And nobody questioned you why you did that?  
 4 A To my knowledge, no. But maybe said, What are you  
 5 doing this for? I don't remember that, though. I don't  
 6 remember anybody questioning.  
 7 Q Did Jack Loholt argue or resist in any way your  
 8 decision to remove him as assistant scoutmaster?  
 9 MR. FREY: I'm going to object to the question  
 10 because it calls for him to reveal what Jack Loholt may or  
 11 may have not said to him in his capacity as clergy.  
 12 Q (By MR. KOSNOFF) Did Jack Loholt appear to accept  
 13 your decision releasing him?  
 14 MR. FREY: Same objection. Instruct the witness  
 15 he does not have to answer if it requires him to divulge  
 16 information he learned in any communication which was  
 17 privileged.  
 18 Q (By MR. KOSNOFF) Go ahead. I think you can answer  
 19 that.  
 20 THE WITNESS: Can I answer?  
 21 MR. FREY: Well, I'm just telling you --  
 22 Q (By MR. KOSNOFF) My question was how he appeared.  
 23 Did his appearance and general demeanor seem to be one of  
 24 acceptance of your decision?  
 25 A He accepted my decision.

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1 Q Did you -- tell me everything you did to make sure  
 2 that Jack Loholt, notwithstanding the fact that you had  
 3 released him as assistant scoutmaster, was not continuing to  
 4 work in the scouting program?  
 5 A I can't remember. I can't remember.  
 6 Q Did you ever attend any scout meetings after you  
 7 released Jack Loholt to determine whether or not he was  
 8 attending those meetings?  
 9 A To determine if he was attending them?  
 10 Q Yes.  
 11 A I can't remember doing so.  
 12 Q Were you aware of where Jack Loholt was living  
 13 when you released him as assistant scoutmaster?  
 14 A I'm not sure of that. I can't remember  
 15 specifically where he was, no.  
 16 Q Do you have any recollection of him living at the  
 17 Allenbach compound?  
 18 A The what?  
 19 Q The property where the Allenbach -- the Herman  
 20 Allenbach family lived.  
 21 A I seem to recollect him being there. If he lived  
 22 there or not, I don't remember that. I do not remember  
 23 that.  
 24 Q Do you remember being aware of whether or not Jack  
 25 Loholt had a relationship with Herman Allenbach?

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1 A What does relationship mean?  
 2 Q A business relationship.  
 3 A He might have worked on his dentist office one  
 4 time. I can't remember that. I don't remember that for  
 5 sure.  
 6 Q You have no recollection of a close business  
 7 association between Dr. Allenbach and Jack Loholt?  
 8 MR. FREY: Object.  
 9 A Business association, no.  
 10 Q Do you have any recollection of whether Jack  
 11 Loholt either lived either on the Allenbach property or in  
 12 one of Mr. -- or Dr. Allenbach's rental homes?  
 13 A I don't have a recollection of that.  
 14 Q With respect to the communication that you  
 15 received to which you've asserted a privilege that resulted  
 16 in you removing Jack Loholt from scouting, did you -- would  
 17 the assertion of your privilege be the same if I were to  
 18 provide you with a written waiver from the person who made  
 19 that communication authorizing you to specifically talk  
 20 about that communication with me?  
 21 A My confidentiality would remain.  
 22 Q Why?  
 23 A Maybe I didn't understand your question.  
 24 Q My question is: If I was able to give you written  
 25 authorization from the source of that communication --

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1 A Oh, from the source? Go ahead. Continue.  
 2 Q -- that communication authorizing you to reveal  
 3 that communication, would you then reveal it to me?  
 4 A I'm not sure. Be written and -- it couldn't just  
 5 be written, it would have to be verbal. I'm not sure. I  
 6 would have to analyze my thinking on the confidential nature  
 7 of it all because it seems to me there's more than one  
 8 person involved.  
 9 Q Okay. Are you referring to yourself?  
 10 A No.  
 11 Q Okay. My -- my question is assuming that the  
 12 source of the confidential communication to which you've  
 13 asserted privilege is one individual. The purpose of my  
 14 question is to determine whether if I were to give you a  
 15 waiver, written, verbal, from that person that said you are  
 16 authorized to speak with Mr. Kosnoff about your  
 17 communication back then, would you then answer my questions  
 18 about that communication?  
 19 A You're talking about a verbal face-to-face along  
 20 with the written. I don't know. I would really have to --  
 21 I would really have to analyze my -- my thoughts on that.  
 22 At this point I just don't know.  
 23 Q Well, do you believe that even with a waiver from  
 24 the person that made the communication which you're treating  
 25 as confidential and privileged that you would not be able to

22 (Pages 82 to 85)

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**EXHIBIT B**

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KENNETH FLEMING and JOHN DOE,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
THE CORPORATION OF THE PRESIDENT	)	
OF THE CHURCH OF JESUS CHRIST OF	)	No. 4-2338 RSM
LATTER-DAY SAINTS, a Utah	)	
corporation sole, a/k/a "MORMON	)	
CHURCH"; LDS SOCIAL SERVICES a/k/a	)	
LDS FAMILY SERVICES, a Utah	)	
corporation,	)	
	)	
Defendants.	)	

DEPOSITION OF PHILIP J. COLEMAN

September 15, 2005

Seattle, Washington

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1 A I can't infer the second from the earlier, but that  
2 was a statement of fact of the position.

3 Q Okay.

4 A I don't recall how well Jack was doing or why he was  
5 put in the position.

6 Q He was already in that position when you became  
7 bishop?

8 A I don't recall that either.

9 Q At some point during the three years that you were  
10 bishop, did someone bring to your attention an  
11 allegation that Jack LoHolt was sexually molesting  
12 boys?

13 A In the specific, I have to say no to sexually  
14 molesting.

15 Q What about generally?

16 A In the general to sexually molesting, I have to say  
17 no.

18 Q Did you receive any information of any kind from any  
19 person that Jack LoHolt was allegedly engaging in  
20 sexually inappropriate activity?

21 A Yes.

22 Q From who whom did you learn that?

23 MR. FREY: I am going to object at this  
24 point in time.

25 Let me tell you the basis for the objection.

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1 He was a bishop at the time, and we treat those  
2 communications as confidential, and in trying to help  
3 you with this answer, I'm not trying to present a  
4 roadblock.

5 As an accommodation and because of the fact that  
6 the individuals involved have not authorized this  
7 information to be given, I think they have a right to  
8 privacy in that regard and a right to have it  
9 protected.

10 As an accommodation, I'll allow the witness to  
11 tell you in a general sense what he heard had  
12 happened, and I'm not waiving any privilege by doing  
13 that.

14 If you'll accept that, we can go forward.

15 You don't have to accept my objection, but if you  
16 want to go forward, I'm willing to do that on this  
17 basis.

18 MR. KOSNOFF: Tom, I would like to take  
19 a brief bathroom break and come back and continue  
20 this dialogue on that point.

21 (Recess 10:27 to 10:33 a.m.)  
22

23 MR. KOSNOFF: Mr. Frey, this is not  
24 unfamiliar ground to the two of us, this point.  
25 We've been at similar points in other cases.

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1           From your comments I take that you are making an  
2           objection based upon a number of criteria. One, I  
3           think I heard an assertion of the clergy penitent  
4           privilege.

5                       MR. FREY: I'll make it simple for you.  
6           I'll tell you what the basis for my objection is:  
7           one, it's a constitutional objection on the free  
8           exercise clause; number two, it may also be on the  
9           basis of the priest penitent privilege depending on  
10          the circumstances under which he may have heard  
11          something; and the third ground is that we've said in  
12          our answers to interrogatories I'm not prepared to  
13          reveal the names of anybody or have my client reveal  
14          the names of anyone who has been molested without  
15          that person's consent because I know for a fact, and  
16          I've gotten court orders on this, that it can be  
17          devastating to have someone knock on their door and  
18          say, "I understand you've been abused and I'd like to  
19          talk to you about it."

20          For those three reasons-- I am willing to go  
21          forward because I know that you have the right to  
22          determine knowledge and what they knew and should  
23          have known, and I'm willing to let him tell you in a  
24          general fashion, and I guess I could proffer this for  
25          the record what he can tell you to get you to where

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1       you need to go--

2               MR. KOSNOFF: Before we go there, I  
3 think this is important that we establish enough of a  
4 factual record here for Judge Martinez so we only  
5 have to take one trip up and bring Dr. Coleman back  
6 one more time as opposed to two more times, so I  
7 would propose that with respect to the assertion of  
8 the claimed privileges that you're making, that you  
9 take a moment and establish whatever factual basis  
10 you would like with Dr. Coleman to support the  
11 assertion of those privileges.

12           I'm inviting you to do that because, as you know,  
13 it's the proponent of the privilege that carries the  
14 burden of establishing it, and I just want to make  
15 sure that when this goes up to Judge Martinez, that  
16 you've had a full opportunity to make as full an  
17 evidentiary record as you need to make your arguments  
18 to him.

19           MR. FREY: It's not my burden. Under  
20 the rule I'm exercising those privileges, and I've  
21 enumerated them.

22           If you wish to question the witness, you are free  
23 to do that. If you choose to go to Judge Martinez,  
24 I'll be happy to supply whatever additional  
25 information I need by way of affidavit or otherwise.

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1 I've tried to explain to you, and you're free to  
2 ask him the circumstances and free to ask him a  
3 number of questions, and I think you can get the  
4 information that you need without revealing these  
5 names.

6 Quite frankly, Tim, I don't want to reveal any  
7 names or my client to reveal any names that he may  
8 have heard of that are not public right now because I  
9 simply don't think it's appropriate.

10 As I've said before, I've gotten court orders  
11 restricting that information.

12 MR. KOSNOFF: I understand that there  
13 are--

14 MR. FREY: So you can question him now  
15 and ask him--

16 MR. KOSNOFF: I just want the record to  
17 reflect that I am not unaware of the fact that there  
18 are protected limited privacy interests of third  
19 parties that the Court has to be mindful of, and it's  
20 a weighing of rights and interests that the Court  
21 will have to make.

22 Let me go forward with some additional questions  
23 so that at least we have some factual record for the  
24 Court.

25 Q (By Mr. Kosnoff) Dr. Coleman, as I understand

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**EXHIBIT C**



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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KENNETH FLEMING and JOHN DOE,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
THE CORPORATION OF THE PRESIDENT	)	
OF THE CHURCH OF JESUS CHRIST OF	)	No. 4-2338 RSM
LATTER-DAY SAINTS, a Utah	)	
corporation sole, a/k/a "MORMON	)	
CHURCH"; LDS SOCIAL SERVICES a/k/a	)	
LDS FAMILY SERVICES, a Utah	)	
corporation,	)	
	)	
Defendants.	)	

DEPOSITION OF FREDERICK R. JOHANSEN

September 16, 2005

Seattle, Washington

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September 16, 2005

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1 Q For the purposes of this question, I would like you  
2 to refer to the definition of sexual contact if you  
3 have any question about the definition, but during  
4 your time as a bishop did you ever come to learn any  
5 information about Jack LoHolt having sexual contact  
6 as it's defined there in Exhibit No. 1, with any  
7 children under the age of 18?

8 MR. FREY: Before you answer that, I am  
9 going to claim privilege if he learned it in any  
10 context in which he had a member of the ward coming  
11 to him in his capacity as a bishop, either in a  
12 confessional sense or in a sense of spiritual  
13 counseling with him.

14 If he learned it otherwise, that he just heard a  
15 rumor in the ward, he's free to answer that.

16 Do you understand what I'm saying?

17 A Yes.

18 MR. FREY: Then go ahead and answer.

19 THE WITNESS: The answer is no.

20 Q (By Mr. Reich) "No," meaning you've had no person in  
21 any capacity approach you with any information about  
22 LoHolt, Jack LoHolt, having sexual contact with  
23 children under the age of 18?

24 MR. FREY: Again, I'm going to object  
25 and instruct the witness not to answer that question

Frederick R. Johansen  
September 16, 2005

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1 with regard to anyone who came to see him in his  
2 capacity as a bishop.

3 Other than that, he can answer, and I think he  
4 has.

5 MR. REICH: Well, I want to explore that  
6 because I'm not satisfied that there has been any  
7 foundation yet for asserting that as a privilege.

8 I don't know whether he has learned of any  
9 information. I am asking whether he has learned from  
10 any source, any information-- I am not asking what  
11 was stated in a confessional or what setting.

12 Q (By Mr. Reich) I just want to know whether at any  
13 point in time you learned while you were bishop that  
14 LoHolt had had sexual contact with children under the  
15 age of 18.

16 MR. FREY: I am making the same  
17 objection. You can go ahead and answer within the  
18 confines that I told you.

19 THE WITNESS: The answer is no.

20 Q (By Mr. Reich) For the purposes of this question  
21 then, have you heard from any source while you were a  
22 bishop-- while you were bishop of the 2nd Ward have  
23 you heard from any source whether Jack LoHolt engaged  
24 in sexual intercourse as is defined in Exhibit No. 1  
25 with a child under the age of 18?

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September 16, 2005

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1 A Oh, yes.

2 It's the Kent 2nd.

3 Q I am not doing that intentionally.

4 Were you ever made aware of any counseling that  
5 Jack LoHolt was receiving at any time that you were  
6 at the Kent 2nd Ward?

7 A No.

8 Q Have you ever had discussions with any others in the  
9 church hierarchy, meaning other bishops, stake  
10 presidents, area presidents, regarding Jack LoHolt?

11 MR. FREY: Before you answer that, if  
12 you had discussions with them in your capacity as a  
13 bishop, in your ecclesiastical capacity concerning  
14 Jack LoHolt, then that's protected in my opinion, and  
15 I instruct you not to answer.

16 If you had discussions outside of that, then you  
17 should answer Counsel's question.

18 THE WITNESS: The answer is no.

19 Q (By Mr. Reich) The question wasn't as specific as  
20 the objection was.

21 The question was: Did you ever have any  
22 conversations with anyone about Jack LoHolt that was  
23 within the hierarchy of the church, not the substance  
24 of the conversation, but have you ever had a  
25 conversation with anyone, including the other

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September 16, 2005

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**EXHIBIT D**



LLOYD HALE, MD - 10/28/99

SCOTT v FOSTER, et al.

<p style="text-align: center;">Page 1</p> <p>1 IN THE CIRCUIT COURT OF THE STATE OF OREGON  2 FOR THE COUNTY OF MULTNOMAH  3  4 JEREMIAH SCOTT, )  5 Plaintiff, )  6 vs ) No. 98-12-08640  7 GREGORY LEE FOSTER, an )  8 Individual; THE CHURCH OF )  9 JESUS CHRIST OF LATTER-DAY )  10 SAINTS, an unincorporated )  11 association, aka, the "Mormon )  12 Church," THE CORPORATION OF )  13 THE PRESIDENT OF THE CHURCH OF )  14 JESUS CHRIST OF LATTER-DAY )  15 SAINTS, a Utah corporation sole,) )  16 CORPORATION OF THE PRESIDING )  17 BISHOP OF THE CHURCH OF JESUS )  18 CHRIST OF LATTER-DAY SAINTS, )  19 a Utah corporation sole, )  20 Defendants. )  21  22 DEPOSITION OF LLOYD DEAN HALE, MD  23 Taken in behalf of the Plaintiff  24  25 Thursday, October 28, 1999</p>	<p style="text-align: right;">Page 3</p> <p>1 BE IT REMEMBERED THAT, the deposition of LLOYD  2 DEAN HALE, MD was taken before Debra C. Symonds,  3 Registered Professional Reporter and Certified Shorthand  4 Reporter for the State of Oregon, on Thursday, October  5 28, 1999, commencing at the hour of 9:15 a.m., in the  6 Conference Room of the law firm of Dunn, Carney, Allen,  7 Higgins &amp; Tongue, 651 SW Sixth Avenue, Suite 1500, in  8 the City of Portland, County of Multnomah, State of  9 Oregon.  10  11 --:-  12 APPEARANCES:  13 DUNN, CARNEY, ALLEN, HIGGINS &amp; TONGUE  14 By Gary E. Rhoades  15 and  16 Tim Kosnoff and Joel Salmi  17 Attorneys at Law  18 Appearing in behalf of the Plaintiff  19 BULLIVANT, HOUSER, BAILEY  20 By David A. Ernst  21 Attorney at Law  22 Appearing in behalf of the Church Defendants  23 KILMER, VORHEES &amp; LAURICK  24 By Jeffrey M. Kilmer  25 Attorney at Law  26 Appearing in behalf of Defendant Foster</p>
<p style="text-align: right;">Page 2</p> <p>1 EXHIBIT DESCRIPTION  2 1 Curriculum Vitae  3 2 Section 10, Church Discipline - Bates Nos.  4 0010-0022  5 3 The Salt Lake Tribune - Excerpts of the  6 Interview with LDS Church Officials  7 4 Child Abuse - Helps for Ecclesiastical  8 Leaders - Bates Nos. 0118-0147 and 0104-0117  9  10 (Exhibits attached hereto)  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>	<p style="text-align: right;">Page 4</p> <p>1 LLOYD DEAN HALE, MD  2 was thereupon produced as a witness in behalf of the  3 Plaintiff and, having been first duly sworn on oath, was  4 examined and testified as follows:  5  6 EXAMINATION  7 BY-MR. SALMI:  8 Q. Dr. Hale, please state your full name and  9 address for the record.  10 A. It's Lloyd, L L O Y D, Dean Hale, H A L E. I  11 live at West Linn. 4950 Summit Street, West Linn,  12 that's Oregon, 97068.  13 Q. Dr. Hale, again, I'm Joel Salmi and I  14 represent Jeremiah Scott in his lawsuit against Bishop  15 Foster and the church defendants, I'll call them. We're  16 going to talk about how to designate the church in this  17 deposition in a minute, but I wanted to explain to you,  18 you've had an opportunity to talk to your attorney today  19 or previously about the procedure involved in a  20 deposition?  21 A. Yes.  22 Q. And you understand that when you give  23 responses to the court reporter, they need to be audible  24 responses rather than shaking your head or nodding?  25 A. Yes.</p>

<p style="text-align: right;">Page 41</p> <p>1 consider to be a confession.</p> <p>2 MR. SALMI: Well, Jeff, that was my question,</p> <p>3 actually, so if this is an inaccurate statement of</p> <p>4 doctrine, he can tell me. I don't see that that's</p> <p>5 legitimate.</p> <p>6 MR. KILMER: Your question was not a question.</p> <p>7 Your question was, if they don't intend, in some</p> <p>8 subjective way apparently, it to be confidential, then</p> <p>9 it isn't a confession.</p> <p>10 MR. SALMI: And that's what I was asking him.</p> <p>11 MR. KILMER: No, that wasn't a question, that</p> <p>12 was a statement, and I am objecting --</p> <p>13 MR. SALMI: I asked him to verify whether</p> <p>14 that's true or not, and that's a question. And I</p> <p>15 understand, your objection is noted. I don't think it's</p> <p>16 a valid objection, but it's noted.</p> <p>17 MR. KILMER: Well, it's very valid in this</p> <p>18 case.</p> <p>19 Q. (By Mr. Salmi) Let me rephrase that. Let me</p> <p>20 give you an example. If a member reports to the bishop</p> <p>21 of a church that their child has been molested by</p> <p>22 another member of the church, do you consider that a</p> <p>23 confession?</p> <p>24 A. No, because I consider that the member</p> <p>25 reporting an incident.</p>	<p style="text-align: right;">Page 43</p> <p>1 your testimony?</p> <p>2 A. That's my understanding, yes.</p> <p>3 Q. As a practical matter, in your experience, do</p> <p>4 you know bishops who share confessions that they've</p> <p>5 received with members of their bishopric?</p> <p>6 A. No, I do not.</p> <p>7 Q. How about sharing those confessions with the</p> <p>8 stake president of the stake over which -- or in which</p> <p>9 their ward is located?</p> <p>10 A. I believe bishops ask the individual or tell</p> <p>11 the individual I need to discuss that or you will need</p> <p>12 to discuss that with the stake president. And in many</p> <p>13 cases they will call me and say a person needs to talk</p> <p>14 to you, and they don't share it unless the person has</p> <p>15 told them it's okay and they feel there's a need to</p> <p>16 prepare me, in a sense, but that's all.</p> <p>17 Q. Under church policy, are children allowed to</p> <p>18 give confessions?</p> <p>19 A. I believe any member who wishes can talk to</p> <p>20 the bishop and tell them about personal matters. And it</p> <p>21 wouldn't necessarily be a confession, it would be</p> <p>22 anything the person felt was confidential. They can</p> <p>23 talk to their bishop in that sense.</p> <p>24 Q. But now I'm asking about a confession in</p> <p>25 particular, and let's say of a major transgression.</p>
<p style="text-align: right;">Page 42</p> <p>1 Q. And in particular, if that member, when they</p> <p>2 report this alleged molestation, ask you to do something</p> <p>3 about it, that's not a confession, is it?</p> <p>4 A. No.</p> <p>5 Q. Assuming that we have a confession that's a</p> <p>6 legitimate, valid confession given to a bishop, are</p> <p>7 there any circumstances under which a bishop is</p> <p>8 authorized to disclose that confession to anyone else?</p> <p>9 MR. ERNST: I'm going to object to the form on</p> <p>10 the use of the word "valid confession." I don't know</p> <p>11 what that means.</p> <p>12 MR. KILMER: And I object on the further</p> <p>13 ground that "anyone else" needs to be qualified as</p> <p>14 opposed to inside and outside of certain church</p> <p>15 doctrines or church hierarchy of authority.</p> <p>16 A. Can you restate it for me, please?</p> <p>17 Q. Yes. Under any circumstances, is a bishop in</p> <p>18 the church authorized to disclose confessions to anyone</p> <p>19 other than the person who confessed to them?</p> <p>20 A. I believe he is not privileged to do that</p> <p>21 unless the person gives their consent for him to discuss</p> <p>22 it with another person who would only be the stake</p> <p>23 president.</p> <p>24 Q. So unless the confessor consents, the bishop</p> <p>25 cannot disclose that confession to anyone else. Is that</p>	<p style="text-align: right;">Page 44</p> <p>1 Would that confession of a child have the same standing</p> <p>2 as a confession of any other member of the church?</p> <p>3 MR. ERNST: Just a minute. I do want to ask</p> <p>4 for a clarification, Joel.</p> <p>5 MR. SALMI: Sure.</p> <p>6 MR. ERNST: Are you talking about confessions</p> <p>7 as a subset specifically of a specific kind of</p> <p>8 confidential information? Because he's telling you</p> <p>9 people are bringing him confidential information, but</p> <p>10 you're talking about a confession.</p> <p>11 MR. SALMI: I'm talking only about</p> <p>12 confessions.</p> <p>13 MR. ERNST: Do you understand that?</p> <p>14 THE WITNESS: Okay.</p> <p>15 Q. (By Mr. Salmi) Yeah, I'm talking only about</p> <p>16 confessions, not just about something -- you know, some</p> <p>17 private conversation you have with a member. But if</p> <p>18 someone -- if a child comes and confesses, is that</p> <p>19 considered a confession that has the same protection of</p> <p>20 confidentiality as any other confession in the Mormon</p> <p>21 church?</p> <p>22 A. Yes.</p> <p>23 Q. So if a child confesses to a major</p> <p>24 transgression to a bishop, that bishop is not authorized</p> <p>25 to inform the parents of that unless the child consents?</p>

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1 A. That is my understanding.  
2 Q. Disciplinary proceedings can be instituted  
3 based upon confessions, can they not?  
4 A. Yes.  
5 Q. And that can be done even if the confessor  
6 does not consent to further disclosure of that  
7 confession; isn't that correct?  
8 A. Yes.  
9 Q. And are members advised when they confess to a  
10 major transgression that a disciplinary proceeding could  
11 be instituted based on that confession?  
12 A. Yes.  
13 Q. When such a confession is made, are they  
14 advised what is entailed in a disciplinary proceeding?  
15 A. That would depend on the bishop's style, but  
16 if it's a realistic probability, he probably would.  
17 Q. And we're going to talk about the nature of  
18 disciplinary proceedings a little bit later, but your  
19 understanding is that they would advise them not just  
20 that discipline is going to be instituted but here's  
21 what it's comprised of and describe it in some sense?  
22 A. But probably -- maybe not at the time of the  
23 confession. Sometimes there's a visit or two or three  
24 before we get to that level of how are we going to  
25 handle this.

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1 Q. So someone -- a member comes and confesses a  
2 major transgression to a bishop, there's a conversation  
3 about it, and maybe they come back two or three times in  
4 their follow-up meetings with the bishop. That happens?  
5 A. Yes.  
6 Q. And then there would be a decision if the  
7 bishop, for example, decides that there isn't progress  
8 being made on taking care of this that a disciplinary  
9 proceeding would be instituted?  
10 A. That can happen that way, yes, provided he  
11 discusses it with the stake president. That is, just  
12 that there needs to be a council.  
13 Q. I want to make reference to Exhibit 2 again,  
14 which you have in front of you, and this would be at  
15 Page 0011, which is I believe the second page of your  
16 document. At the bottom of the left-hand column, the  
17 last full paragraph, Subsection 2 reads, "Predators may  
18 need to be identified to protect possible future  
19 victims."  
20 A. Uh-huh (affirmative response).  
21 Q. Take your time and read that whole paragraph.  
22 I won't read it into the record because it's part of the  
23 record.  
24 A. (Pause; referring). Okay.  
25 Q. Now, this is under the section of the handbook

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1 entitled Confessions and Confidentiality. If someone  
2 confesses to sexual molestation of children, to the  
3 extent that you would consider them a predator, how are  
4 they identified to protect possible future victims?  
5 A. If a member confesses that type of  
6 transgression, they are encouraged to report themselves  
7 to local authorities, to take responsibility for their  
8 action to the full extent of the law. So first the  
9 member is encouraged to do so.  
10 If a member chose not to do so, then -- and if  
11 a disciplinary council was held, then the action of that  
12 council would be used to inform those who might be  
13 considered ones that should know that such as a bishop.  
14 Even in the general priesthood session or in the adult  
15 relief society session, if a person was a predator and  
16 there could be victims, then they -- there would be a --  
17 at least a general statement regarding the protection or  
18 the watching, but the details of the person's  
19 transgression would not be disclosed without their  
20 permission.  
21 Q. In the case of a sexual predator, would there  
22 be a disclosure that they were a sexual predator?  
23 A. With their permission, it could happen. I  
24 have never seen that happen. Without their permission,  
25 I do not know exactly how it would be handled. I would

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1 have to think that one through and perhaps even talk to  
2 someone about -- other stake presidents, someone who has  
3 experience in that area.  
4 Q. You do not have personal experience in that  
5 area?  
6 A. Not as a predator.  
7 Q. What about with someone who has confessed to a  
8 major transgression of molesting children?  
9 A. I have experience there.  
10 Q. And do you have experience with that occurring  
11 where a disciplinary council has been convened?  
12 A. Yes.  
13 Q. And what was the -- I just want to follow up  
14 with this one example. What was the consequence or the  
15 conclusion of the disciplinary council? What decision  
16 did they reach?  
17 MR. ERNST: You know, here I'm concerned that  
18 we're getting into areas that are privileged. I'm not  
19 going to let him talk about deliberations or conclusions  
20 of actual disciplinary councils. I just don't think  
21 that's going to be allowed by the judge.  
22 MR. SALMI: Counsel, without identifying  
23 anyone involved in the process, I don't see how that  
24 could possibly violate any confidentiality, privacy or  
25 anything else.

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1 agrees that it is.  
 2 MR. ERNST: No, it's not.  
 3 Q. (By Mr. Salmi) So given that example, you said  
 4 that first the bishop would try to get the person to  
 5 report themselves, to turn themselves in, then they  
 6 would try to get the person who gave them the initial  
 7 information to turn them in.  
 8 A. Right.  
 9 Q. Why wouldn't the bishop simply turn them in?  
 10 MR. ERNST: Object to the form. You've  
 11 assumed that somebody who is not the molester can't give  
 12 confidential information. That was my objection.  
 13 MR. KILMER: And it was a good one.  
 14 MR. ERNST: Thank you. You assume that a  
 15 molester is the only one who can give confidential  
 16 information. Object to the form.  
 17 A. The bishop would have learned this secondhand  
 18 from the individual who came to him. I think it would  
 19 be better if the individual who learned this or knew  
 20 this themselves went to children's services or to the  
 21 police department. There's no reason the bishop could  
 22 not do it, but -- and he may do it, but if someone else  
 23 makes the report who knows personally, it seems better.  
 24 Q. And isn't it the policy of the Mormon church  
 25 that bishops are to attempt to have other people report

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1 would not be able to report it. If he learns about this  
 2 in another setting where an individual comes to him, he  
 3 very well may disclose it.  
 4 Q. And that was the example I gave you. I wasn't  
 5 raising this in the context of a disciplinary proceeding  
 6 where the information comes in there, but simply a  
 7 parent comes to the bishop and says, my child was  
 8 molested by Brother Smith, --  
 9 A. Okay.  
 10 Q. -- do something about it. Is that, under the  
 11 policy and doctrine of the Mormon church, considered a  
 12 confidential communication?  
 13 A. No, I don't believe so.  
 14 Q. And couldn't, under those circumstances, the  
 15 bishop go directly to the police and report that?  
 16 A. He could, and likely would, but he would also  
 17 encourage that parent to immediately go to the police.  
 18 Q. And is it the policy of the Mormon church that  
 19 under those circumstances the bishop would first go to  
 20 the accused person and confront them with the accusation  
 21 before reporting it to the police or anyone else?  
 22 A. If it could be done expeditiously, I believe  
 23 he would.  
 24 Q. And when such a confrontation is made, does  
 25 the Mormon church have any policy to avoid a situation

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1 the abuse rather than reporting it themselves?  
 2 A. Generally that's true because the other person  
 3 may know more firsthand or immediate information, so  
 4 yes.  
 5 Q. Does that hold true with stake presidents as  
 6 well, that same concept, that they should attempt to get  
 7 the abuser first to report themselves, and if they  
 8 can't, then to find somebody else to report the abuse?  
 9 A. Yes.  
 10 Q. If the parent of a child in a ward comes to  
 11 the bishop and says, my child was molested by Brother  
 12 Smith in our ward and I want you to do something about  
 13 it, under the policy of the Mormon church, is that  
 14 considered a confidential communication?  
 15 MR. ERNST: Thank you.  
 16 A. Well, that's certainly not a confession but it  
 17 could be confidential, but I don't believe it would be a  
 18 protected confidential disclosure.  
 19 Q. Now, you've made a distinction here between  
 20 confidential and protected confidential, and I want you  
 21 to tell me what you mean by that.  
 22 A. Well, again, if the -- if in the course of the  
 23 offender confessing to the bishop or if in the course of  
 24 any meetings such as the disciplinary council any of  
 25 this information comes out, then the stake president

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1 where the alleged perpetrator flees the jurisdiction or  
 2 destroys evidence before they're reported to the police?  
 3 A. There's no policy on that in that regard.  
 4 Q. As a bishop, wouldn't you have that concern?  
 5 If you confronted somebody who had been accused of  
 6 molesting a child before you reported him to the police,  
 7 wouldn't you have a concern that they might flee?  
 8 A. I've not ever seen that happen. These are  
 9 generally people that live within the ward, I believe,  
 10 and I don't know that that would be a likely thing to  
 11 occur. It could happen, but I wouldn't be greatly  
 12 concerned.  
 13 Q. And again, under circumstances where someone  
 14 outside the context of a disciplinary proceeding reports  
 15 that some other member of the ward has molested their  
 16 child, under those circumstances, is report of the abuse  
 17 to law enforcement always made? Is that the policy of  
 18 the Mormon church?  
 19 MR. ERNST: I object to the form. It calls  
 20 for him to speculate.  
 21 A. I cannot say it always is. Ideally it is.  
 22 Q. That would be the policy of the church?  
 23 A. Yes, I believe so.  
 24 Q. To have it reported?  
 25 A. Yes, I believe it is.